



IRA A. JACKSON  
COMMISSIONER

# *The Commonwealth of Massachusetts*

*Department of Revenue*

*Leverett Saltonstall Building*

*100 Cambridge Street, Boston 02204*

September 24, 1984

You are a motor carrier and user of special fuels licensed by the Commonwealth. In your letter to the Attorney General which has been referred to the Department of Revenue for reply, you question the administration of Massachusetts tax law relative to special fuel used on the Massachusetts Turnpike ("Turnpike").

Generally, a Massachusetts excise is imposed on all motor fuels used to power motor vehicles over the highways of Massachusetts. An excise is imposed on fuel and special fuel purchased in Massachusetts. (G.L. c.64A, 64E). A person who acquires fuel or special fuel outside the Commonwealth and uses such fuel on the Massachusetts highways is subject to an excise for the privilege of using the Massachusetts highways. (G.L. c.64F, § 3).

Subject to reciprocity restrictions, every person regularly operating a motor vehicle upon the highways of another state using fuel or special fuel acquired in Massachusetts may apply for a credit or refund equal to the fuel tax actually paid to the state in which it was used not to exceed the excise imposed by Massachusetts on the use of such fuel or special fuel. (G.L. c.64F, § 4).

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To calculate this refund the taxpayer must determine the excess of fuel purchased in Massachusetts over the fuel used in Massachusetts. To determine fuel used in Massachusetts the taxpayer must multiply the fuel used in operations everywhere by the ratio of miles traveled in operations everywhere to miles traveled in operations in Massachusetts. Within this calculation the taxpayer is using his actual rate of miles per gallon. See Form MCT-9, used to apply for this refund.

The Massachusetts Turnpike is not a Massachusetts highway within the meaning of Chapters 64A, 64E and 64F. Chapters 64A and 64E include provisions for reimbursement of taxes paid on fuel and special fuel used on the Turnpike.

Chapter 64E, Section 5 provides that any person who buys any special fuel on which a Massachusetts excise has been paid or is chargeable and uses such fuel on the Turnpike "...shall be reimbursed the amount of said excise in the manner...hereinafter set forth...." This refund calculation is based upon the statutory rate of miles per gallon, "...one gallon for each fifteen miles of indicated travel by passenger cars, ambulances, hearses, motorcycles and light trucks, and in proportion of one gallon for each five miles of indicated travel by all other trucks and buses." See Form SFT-9T, used to apply for the Turnpike use refund. Section 5 requires that such claims for reimbursement be made on a "...calendar half year..." basis.

In your letter you indicate that you are entitled to a refund based on out-of-state tax paid on fuel purchased and taxed in Massachusetts, used and taxed again out-of-state. (G.L. c.64F, § 4). To calculate this refund (Form MCT-9) you are required to include Turnpike miles. You contend that because fuel used on the Massachusetts Turnpike is exempt from Massachusetts tax, the calculation of Massachusetts miles traveled should exclude Turnpike miles. You suggest that if Turnpike miles are excluded from the MCT-9 refund calculation there would be no need to file for the Turnpike use refund.

Massachusetts General Laws Chapter 64E, Section 5 states that any person who buys special fuels on which a Massachusetts excise has already been paid or is chargeable and uses the special fuel in any manner except in the operation of motor vehicles upon highways will be reimbursed the amount of such excise.

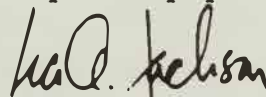
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A person operating a motor vehicle on the Massachusetts Turnpike using special fuel upon which a fuel tax has been paid or is chargeable has the statutory right to reimbursement. If the taxpayer were allowed to exclude Turnpike miles from the MCT-9 calculation the taxpayer could still then file for a Turnpike use refund. This would result in the taxpayer receiving a double refund based on Turnpike use. A person operating a motor vehicle on the Turnpike using fuel upon which an excise has been paid or is chargeable is entitled to a single Turnpike use refund.

Additionally, the refund available under 64F and computed on Form MCT-9 is calculated on an actual rate of mileage. The Turnpike use refund calculation is based on a statutory mileage rate. Thus, the Turnpike miles cannot simply be excluded from the MCT-9 calculation.

The right to a Turnpike use refund at a specified rate of mileage exists by statute. The Massachusetts Turnpike forms SFT-9T and GT-9T are designed to facilitate such refunds.

Very truly yours,



Commissioner of Revenue

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